SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 751

COMMISSIONER OF INTERNAL REVENUE

vs.

AMELIA E. COLLINS

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Certificate from U. S. C. C. A., Ninth Circuit	1	1
Statement	1	1
Question certified	3	3
Judges' signatures	4	3
Clerk's certificate [omitted in printing]	4	3

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We, who include the writer of the opinion in Commissioner v. Green, hereafter referred to, are in grave doubt concerning the personal liability of a transferee for interest so paid and the payor's right to deduct such interest payment in computing her income tax. The Eighth Circuit in Nunan v. Green, 146 F. 2d 352, the Fifth Circuit in Commissioner v. Henderson, 147 F. 2d 619, and this circuit in Commissioner v. Green, 148 F. 2d 157, have held that the taxpayer may not deduct interest so paid in computing taxpayer's personal income tax.

No one of the opinions in these cases considered the decision of the Supreme Court in Dobson v. Commissioner, 320 U. S. 489, respecting the value of conforming to the Tax Court's decisions.

More recently the Third Circuit in Commissioner v. Breyer, 151 F. 2d 267, 270, has decided to the contrary and upheld such deduction. In that decision full consideration is given and reliance had upon the Dobson decision in which it is said

"* * * when the court cannot separate the elements of a decision so as to identify a clear-cut mistake of law, the decision of the Tax Court must stand,"

and emphasized that the members of that court

"not infrequently bring to their task long legislative or administrative experience in their subject. The volume of tax matters flowing through the Tax Court keeps its members abreast of changing statutes, regulations, and Bureau practices, informed as to
3 the background of controversies, and aware of the impact of the decisions on both Treasury and taxpayer * * * Congress has invested the Tax Court with primary authority for redetermining deficiencies, which constitutes the greater part of tax litigation. This requires it to consider both law and facts. * * * In deciding law questions courts may properly attach weight to the decision of points of law by an administrative body having special competence to deal with the subject matter. The Tax Court is informed by experience and kept current with tax evolution and needs by the volume and variety of its work. While its decisions may not be binding precedents for courts dealing with similar problems, *uniform administration would be promoted by conforming to them where possible.*" [Italics supplied.] Dobson v. Commissioner, 320 U. S. 489 at page 520 and page 498.

With this conflict of decision and opinion in the circuits on this often appearing and important question of the character of the transferee's liability, the situation, after the decision in Commissioner v. Breyer adverse to the Commissioner, was clearly one for certiorari within Supreme Court Rule 38. However, we are ad-

vised that the Commissioner has not sought certiorari in that case, and the confusion of authority remains. Hence, in addition to our grave doubt in this conflict of decision, cf. Lang v. Commissioner, 304 U. S. 264, certification seems to us the most expeditious method of serving the litigants before us and the profession at large.

Question

For our instruction for the proper disposition of this cause, we certify to the Supreme Court the following question:

A taxpayer is a transferee by distribution of property from an estate in probate, which estate owes an estate tax to the United States but which is neither assessed nor paid at the time of distribution. Thereafter the federal estate tax is returned and the tax assessed. Such taxpayer pays the estate tax, including the interest thereon, from taxpayer's personal funds. Is such a taxpayer, in his return of gross income for the year in which such interest
4 is paid, entitled to deduct from such gross income the amount of such interest in computing his income tax liability for that year?

Dated at San Francisco, California, January 9, 1946.

WILLIAM DENMAN,
United States Circuit Judge.
HOMER T. BONE,
United States Circuit Judge.
WILLIAM E. ORR,
United States Circuit Judge.

(Endorsed:) Certificate certifying certain question of law to the Supreme Court of the United States upon which the United States Circuit Court of Appeals for the Ninth Circuit desires instruction for the proper decision of a cause. Filed January 9, 1946. Paul P. O'Brien, Clerk.

[Clerk's certificate to foregoing paper omitted in printing.]

(Endorsement on cover:) File No. 50454. U. S. Circuit Court of appeals, Ninth Circuit. Term No. 751. Commissioner of Internal Revenue vs. Amelia E. Collins. On Certificate. Filed January 15, 1946. Term No. 751 O. T. 1945.

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